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05 UNITED STATES DISTRICT COURT
06 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

07 ANTHONY R. JONES,) CASE NO. C12-5346-RAJ-MAT
08 Plaintiff,)
09 v.) REPORT AND RECOMMENDATION
10 MICHAEL J. ASTRUE, Commissioner) RE: SOCIAL SECURITY DISABILITY
of Social Security,) APPEAL
11 Defendant.)
12 _____)

13 Plaintiff Anthony R. Jones proceeds through counsel in his appeal of a final decision of
14 the Commissioner of the Social Security Administration (Commissioner). The Commissioner
15 denied plaintiff's application for Supplemental Security Income (SSI) after a hearing before an
16 Administrative Law Judge (ALJ). Having considered the ALJ's decision, the administrative
17 record (AR), and all memoranda of record, the Court recommends that this matter be
18 AFFIRMED.

19 **FACTS AND PROCEDURAL HISTORY**

20 Plaintiff was born on XXXX, 1986.¹ He has a high school education and no past
21

22 ¹ Plaintiff's date of birth is redacted back to the year of birth in accordance with Federal Rule of Civil Procedure 5.2(a) and the General Order of the Court regarding Public Access to Electronic Case

01 relevant work. (AR 25-26.)

02 Plaintiff filed an application for SSI on September 18, 2008, alleging disability
03 beginning May 4, 2007. (AR 18.) Plaintiff's application was denied at the initial level and on
04 reconsideration, and he timely requested a hearing.

05 On November 18, 2010, ALJ Gordon W. Griggs held a hearing, taking testimony from
06 plaintiff, and a vocational expert. (AR 33-77.) On January 6, 2011, the ALJ issued a decision
07 finding plaintiff not disabled. (AR 18-27.)

08 Plaintiff timely appealed. The Appeals Council denied plaintiff's request for review
09 on March 14, 2012 (AR 1-6), making the ALJ's decision the final decision of the
10 Commissioner. Plaintiff appealed this final decision of the Commissioner to this Court.

11 **JURISDICTION**

12 The Court has jurisdiction to review the ALJ's decision pursuant to 42 U.S.C. § 405(g).

13 **DISCUSSION**

14 The Commissioner follows a five-step sequential evaluation process for determining
15 whether a claimant is disabled. *See* 20 C.F.R. §§ 404.1520, 416.920 (2000). At step one, it
16 must be determined whether the claimant is gainfully employed. The ALJ found plaintiff had
17 not engaged in substantial gainful activity since the alleged onset date. At step two, it must be
18 determined whether a claimant suffers from a severe impairment. The ALJ found severe
19 plaintiff's borderline intellectual functioning, depression, personality disorder, and psychotic
20 disorder. Step three asks whether a claimant's impairments meet or equal a listed impairment.
21 The ALJ found plaintiff's impairments did not meet or equal the criteria of a listed impairment.

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Files, pursuant to the official policy on privacy adopted by the Judicial Conference of the United States.

01 If a claimant's impairments do not meet or equal a listing, the Commissioner must
02 assess residual functional capacity (RFC) and determine at step four whether the claimant has
03 demonstrated an inability to perform past relevant work. The ALJ found plaintiff able to
04 perform a full range of work at all exertional levels, but with the following nonexertional
05 limitations: plaintiff is limited to tasks that can be learned in thirty days or less, and that
06 involve no more than simple, work-related decisions and few workplace changes. Because the
07 ALJ found no past relevant work, he proceeded directly to step five, where the burden shifts to
08 the Commissioner to demonstrate the claimant retains the capacity to make an adjustment to
09 work existing in significant levels in the national economy. With the assistance of a vocational
10 expert, the ALJ found plaintiff capable of performing other jobs, such as the position of Cleaner
11 II (DOT 919.687-013) and Basket Filler (DOT 529.687-010).

12 This Court's review of the ALJ's decision is limited to whether the decision is in
13 accordance with the law and the findings supported by substantial evidence in the record as a
14 whole. *See Penny v. Sullivan*, 2 F.3d 953, 956 (9th Cir. 1993). Substantial evidence means
15 more than a scintilla, but less than a preponderance; it means such relevant evidence as a
16 reasonable mind might accept as adequate to support a conclusion. *Magallanes v. Bowen*, 881
17 F.2d 747, 750 (9th Cir. 1989). If there is more than one rational interpretation, one of which
18 supports the ALJ's decision, the Court must uphold that decision. *Thomas v. Barnhart*, 278
19 F.3d 947, 954 (9th Cir. 2002).

20 Plaintiff argues the ALJ erroneously evaluated the medical evidence, failed to give
21 legally sufficient reasons for evaluating his credibility, and erred in considering the lay witness
22 statements. He requests remand for further administrative proceedings. The Commissioner

01 argues that the ALJ's decision is supported by substantial evidence and should be affirmed.
02 For the reasons set forth below, the Court agrees with the Commissioner.

03 Credibility Assessment

04 In assessing credibility, an ALJ must first determine whether a claimant presents
05 "objective medical evidence of an underlying impairment 'which could reasonably be expected
06 to produce the pain or other symptoms alleged.'" *Lingenfelter v. Astrue*, 504 F.3d 1028, 1036
07 (9th Cir. 2007) (quoting *Bunnell v. Sullivan*, 947 F.2d 341, 344 (9th Cir. 1991)). Given
08 presentation of such evidence, and absent evidence of malingering, an ALJ must provide clear
09 and convincing reasons to reject a claimant's testimony. *Id.* See also *Vertigan v. Halter*, 260
10 F.3d 1044, 1049 (9th Cir. 2001).

11 The ALJ's credibility assessment must be rendered with sufficiently specific findings,
12 supported by substantial evidence. "General findings are insufficient; rather, the ALJ must
13 identify what testimony is not credible and what evidence undermines the claimant's
14 complaints." *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1996). "We require the ALJ to
15 build an accurate and logical bridge from the evidence to her conclusions so that we may afford
16 the claimant meaningful review of the SSA's ultimate findings." *Blakes v. Barnhart*, 331 F.3d
17 565, 569 (7th Cir. 2003). "In weighing a claimant's credibility, the ALJ may consider his
18 reputation for truthfulness, inconsistencies either in his testimony or between his testimony and
19 his conduct, his daily activities, his work record, and testimony from physicians and third
20 parties concerning the nature, severity, and effect of the symptoms of which he complains."
21 *Light v. Social Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997).

22 One does not need to be "utterly incapacitated" in order to be found disabled under the

01 Social Security Act. *Fair v. Bowen*, 885 F.2d 597, 603 (9th Cir. 1989). Nevertheless, a
02 claimant's claims of "a totally debilitating impairment" may be discredited when the claimant
03 reports participation in everyday activities that indicate capacities transferrable to a work
04 setting, even if those activities suggest some difficulty functioning. *Molina v. Astrue*, 674 F.3d
05 1104, 1112-13 (9th Cir. 2012). As these cases illustrate, the ALJ may use ordinary techniques
06 of credibility evaluation in determining what weight will be given to the claimant's testimony
07 as to the severity of his symptoms and impairments. *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th
08 Cir. 1996). *See also* Social Security Ruling (SSR) 88-13.

09 Here, the ALJ found plaintiff's testimony about the intensity, persistence, and limiting
10 effects of his symptoms not entirely credible. In analyzing these allegations, the ALJ focused
11 primarily on discrepancies between plaintiff's testimony and the rest of the evidence:

12 Despite the claimant's allegations that he is unable to work on a regular and
13 consistent basis due to mental impairments, the record shows that the claimant's
14 statements are not fully credible. The record shows that the claimant provides
15 child-care to his infant and toddler-aged daughters, takes care of pets, and
16 performs self-care and numerous activities of daily living on his own, without
17 the assistance of others. [AR 197-204, 205-12, 360-64.]

18 The claimant alleged that he needs reminders from his grandmother to perform
19 tasks, however his grandmother reported that she tries to respect the claimant's
20 privacy, and therefore she is not sure what he does during most of the day. [AR
21 205.]

22 The claimant reported that he lost his last job performing ground maintenance
because he took allergy medication, and fell asleep on the job, which suggests
that the discharge was not due to a mental impairment or inability to perform a
job task. [AR 361.]

At the hearing, the claimant provided poor excuses for not following up with
mental health counseling in 2008, and for not following up with job search
activities. The claimant also testified that when he left the house, his girlfriend
and grandmother could not properly take care of the children, without his

01 intervention and assistance. This statement is inconsistent with many of the
02 claimant's other statements regarding the need for assistance and reminders,
undermining the claimant's overall credibility.

03 The claimant appears to lack the maturity and motivation to exercise the
04 self-discipline necessary to look for and maintain simple, unskilled work. An
absence of maturity and motivation is not a work-related impairment.

05 (AR 22-23.)

06 Plaintiff disputes the conclusions reached by the ALJ in evaluating the evidence.
07 However, the Court finds plaintiff's arguments unavailing. At the most, plaintiff simply
08 suggests alternative interpretations of the evidence.

09 For example, plaintiff disputes the ALJ's interpretation of Dr. Raney's description of
10 the reason he was fired from his ground maintenance job, arguing the sleeping incident was
11 only one link in the chain that led to his termination. Dr. Raney reports plaintiff telling him in
12 the examination: "He recalls some emotional distress because of his allergies. He took some
13 Benadryl once and fell asleep on the grass. After that he was fired. He has not worked since."
14 (AR 361.) Plaintiff now suggests his poor job performance "set the stage for his
15 termination[.]" (Dkt. 16 at 14), while a review of plaintiff's testimony does not show he made
16 such an assertion at the hearing (AR 49-50).

17 Plaintiff argues the ALJ unreasonably discounted his credibility by commenting on his
18 "poor excuses" for not following up with mental health treatment or job search activities, since
19 these problems are wholly consistent with his impairments. He notes he was dropped from
20 DSHS programs because he did not turn in documents on time, missed at least one consultative
21 examination, and even missed his first hearing. The ALJ noted, however, that plaintiff
22 testified the reason he could not make it to job interviews was that his children could not be

01 taken care of by his girlfriend or his grandmother without his assistance and intervention. (AR
02 65-66.) The ALJ did incorporate significant limitations on plaintiff's RFC due to his mental
03 impairments, but found his asserted complete inability to look for and maintain even simple,
04 unskilled work attributable to a lack of maturity and motivation. (AR 23.)

05 Plaintiff contends the ALJ overlooked a questionnaire submitted by his grandmother in
06 July 2010, where she explained the only way to get plaintiff to complete a chore was to remind
07 him. However, to the contrary, the ALJ specifically mentioned this document in summarizing
08 Karen Wheeler's statements. (AR 25.) As further discussed below, the ALJ provided germane
09 reasons for giving less weight to Ms. Wheeler's statements about plaintiff's daily activities and
10 problems because of her previous statement that she tried to give plaintiff and his girlfriend
11 privacy and did not know what they did after they arose and had breakfast. (AR 205.)

12 The ALJ also cited evidence that plaintiff was able to provide child care to his infant and
13 toddler-aged daughters, take care of pets, perform self-care and numerous other activities of
14 daily living on his own without assistance. The ALJ reasonably found plaintiff's ability to
15 perform these activities as contradictory of his asserted inability to perform any work.

16 The ALJ's interpretation of the evidence, if reasonable, will not be second-guessed by
17 this Court. *See Thomas*, 278 F.3d at 954. The Court finds the ALJ provided legally sufficient
18 reasons for evaluating the credibility of plaintiff's statements.

19 Medical Opinion Evidence

20 In general, more weight should be given to the opinion of a treating physician than to a
21 non-treating physician, and more weight to the opinion of an examining physician than to a
22 non-examining physician. *Lester*, 81 F.3d at 830. Where not contradicted by another

01 physician, a treating or examining physician's opinion may be rejected only for "'clear and
02 convincing'" reasons. *Id.* (quoting *Baxter v. Sullivan*, 923 F.2d 1391, 1396 (9th Cir. 1991)).
03 Where contradicted, a treating or examining physician's opinion may not be rejected without
04 "'specific and legitimate reasons' supported by substantial evidence in the record for so doing."
05 *Id.* at 830-31 (quoting *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)). The ALJ may
06 reject physicians' opinions "by setting out a detailed and thorough summary of the facts and
07 conflicting clinical evidence, stating his interpretation thereof, and making findings." *Reddick*
08 *v. Chater*, 157 F.3d 715, 725 (9th Cir. 1998) (citing *Magallanes*, 881 F.2d at 751). Rather than
09 merely stating her conclusions, the ALJ "must set forth [her] own interpretations and explain
10 why they, rather than the doctors', are correct." *Id.* (citing *Embrey v. Bowen*, 849 F.2d 418,
11 421-22 (9th Cir. 1988)).

12 The ALJ need not discuss each piece of evidence in the record. *Vincent v. Heckler*, 739
13 F.2d 1393, 1394-95 (9th Cir. 1984). Instead, "she must explain why 'significant probative
14 evidence has been rejected.'" *Id.* (quoting *Cotter v. Harris*, 642 F.2d 700, 706 (3d Cir. 1981)).

15 A. Daniel Neims, Psy.D.

16 Plaintiff disputes the weight assigned by the ALJ to the opinion of evaluating
17 psychologist Daniel Neims. The ALJ noted that "[d]espite the claimant's unremarkable
18 mental status test results, Dr. Neims opined that the claimant was markedly impaired in his
19 ability to exercise judgment and make decisions, and in his ability to respond appropriately to
20 and tolerate the pressure and expectations of a normal work setting." (AR 23.)

21 Plaintiff suggests the ALJ is an "other source" who may not substitute his own
22 interpretation of the evidence for that of the medical source. This novel argument misses the

01 mark. Indeed, it is the role of the ALJ to resolve conflicts in the medical record. *Carmickle v.*
02 *Comm’r of SSA*, 533 F.3d 1155, 1164 (9th Cir. 2008) (citing *Benton v. Barnhart*, 331 F.3d
03 1030, 1040 (9th Cir. 2003). *Accord Thomas*, 278 F.3d at 956-57 (“When there is conflicting
04 medical evidence, the Secretary must determine credibility and resolve the conflict.”) (quoting
05 *Matney v. Sullivan*, 981 F.2d 1016, 1019 (9th Cir. 1992)). The Commissioner need not give
06 “any special significance” to opinions from any medical source, treating or otherwise, on an
07 issue reserved to the Commissioner, such as whether a claimant is disabled or unable to work,
08 or the nature and severity of a claimant’s impairments. 20 C.F.R. § 416.927(d)(3).

09 Here, the ALJ reasonably found Dr. Neims’ psychological evaluation internally
10 inconsistent. Dr. Neims noted plaintiff to be interested in working and “highly motivated” to
11 work by his impending fatherhood. (AR 307.) Yet, despite opining plaintiff was a “strong
12 D[epartment of] V[ocational] R[ehabilitation] candidate,” with no more than mild limitations in
13 his ability to understand, remember and follow simple or even complex instructions, and
14 conducting an unremarkable mental status examination, Dr. Neims found plaintiff “markedly”
15 impaired in his ability to exercise judgment and make decisions, and respond appropriately to
16 and tolerate the pressure and expectations of a normal work setting. (*Id.*)

17 While plaintiff suggests an alternative interpretation of Dr. Neims’ opinions, he falls
18 short in convincing this Court that the ALJ’s interpretation of the evidence was unreasonable.
19 In such a situation, a reviewing court must uphold the ALJ’s conclusion. *Thomas*, 278 F.3d at
20 954. The Court finds no error in the ALJ’s evaluation of Dr. Neims’ opinions.

21 B. James Raney, M.D.

22 Plaintiff argues the ALJ failed to articulate specific and legitimate reasons supported by

01 substantial evidence in the record for the evaluation of the opinion of Dr. Raney, another
02 consultative examiner. The ALJ found inconsistent, on the one hand, Dr. Rainey's opinions
03 that plaintiff could perform simple and repetitive tasks, would likely be able to accept
04 instructions from supervisors and interact well with co-workers and the public, and maintain
05 regular attendance and complete a normal workday and workweek without interruptions from
06 his condition, as compared to Dr. Raney's conclusion that plaintiff appeared unable to perform
07 work activities on a consistent basis without special or additional instruction or supervision.
08 (AR 24.) The ALJ also found this portion of Dr. Raney's conclusions to be contradicted by
09 evidence showing plaintiff was capable of conducting his affairs and caring for his children
10 independently, on a daily basis, including plaintiff's own testimony that his girlfriend and
11 grandmother could not care for the children without his assistance and intervention (AR 66,
12 198, 206). The ALJ further noted that plaintiff told Dr. Raney he had been fired from his last
13 job after his allergy medication caused him to fall asleep, rather than because of an inability to
14 perform job tasks.² Dr. Raney also opined plaintiff could deal with the usual stress encountered
15 in competitive work. (AR 364.)

16 Plaintiff argues that other evidence, such as the letter from his uncle describing his work
17 experience at the Kitsap Golf and Country Club, supports Dr. Raney's conclusion that plaintiff
18 would need special or additional supervision in order to succeed in a work setting. However,
19 as described below, the ALJ conducted a legally sufficient evaluation of this lay witness
20 statement, as well as the statement from plaintiff's grandmother. (AR 25.) While plaintiff

22 ² Plaintiff urges a different interpretation of Dr. Raney's narration of this incident (Dkt. 16 at 14, AR 361), but the Court finds the ALJ's interpretation at least equally rational.

01 urges a different evaluation of these statements, it is not the function of this Court to re-weigh
02 the evidence. Rather, the reviewing Court is required to uphold the ALJ's findings if they are
03 supported by inferences reasonably drawn from the record. *Molina*, 674 F.3d at 1111 (citing
04 *Tommasetti v. Astrue*, 533 F.3d 1035, 1038 (9th Cir. 2008)). The Court, therefore, also finds
05 no error in the evaluation of Dr. Raney's opinions.

06 C. State Agency consultant

07 State agency psychological consultants are highly qualified experts in the evaluation of
08 the medical issues in disability claims under the Social Security Act. 20 C.F.R. §
09 416.927(f)(2)(i); SSR 96-6p. The ALJ is not bound by their opinions, but must consider their
10 findings and explain the weight given to them. *Id.* In appropriate cases, their opinions may
11 be given more weight than that of treating or examining sources. SSR 96-6p.

12 Plaintiff was evaluated in June 2009 by a state Disability Determination Services
13 psychologist, Gary Nelson, Ph.D. Dr. Nelson found plaintiff mildly limited in activities of
14 daily living and social functioning, and moderately limited in concentration, persistence, and
15 pace. Dr. Nelson found plaintiff able to perform simple, repetitive tasks, and to maintain
16 concentration and persistence for a full workday with regular breaks. He felt plaintiff could
17 work with the public, accept instructions from supervisors, adapt to change in the workplace
18 and make simple work-related decisions on his own. (AR 365-82.) The ALJ gave significant
19 weight to this opinion, finding it consistent with the overall evidence of record. (AR 24.)

20 Plaintiff asserts Dr. Nelson based his assessment on Dr. Raney's consultative
21 examination and contends the ALJ erred in relying on Dr. Nelson's opinion "without
22 adequately resolving the conflicts between this opinion and the opinions of Dr. Neims and Dr.

01 Raney.” (Dkt. 16 at 9.) However, this argument fails as the Court finds the ALJ’s assessment
02 of the consulting examiners’ opinions to be supported by substantial evidence.

03 Lay Witness Statements

04 Lay witness testimony as to a claimant’s symptoms or how an impairment affects ability
05 to work is competent evidence and cannot be disregarded without comment. *Van Nguyen v.*
06 *Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). The ALJ can reject the testimony of lay
07 witnesses only upon giving germane reasons. *Smolen*, 80 F.3d at 1288-89 (finding that
08 rejection of testimony of family members because, *inter alia*, they were “‘understandably
09 advocates, and biased’” amounted to “wholesale dismissal of the testimony of all the witnesses
10 as a group and therefore [did] not qualify as a reason germane to each individual who
11 testified.”) (citing *Dodrill v. Shalala*, 12 F.3d 915, 918 (9th Cir. 1993)).

12 An ALJ need not, however, “discuss every witness’s testimony on a[n] individualized,
13 witness-by-witness basis.” *Molina*, 674 F.3d at 1114. Instead, where an ALJ provides
14 germane reasons for rejecting the testimony of one witness, the ALJ need only point to those
15 reasons upon rejecting similar testimony offered by a different witness. *Id.* (citing *Valentine v.*
16 *Comm’r SSA*, 574 F.3d 685, 694 (9th Cir. 2009) (because “the ALJ provided clear and
17 convincing reasons for rejecting [the claimant’s] own subjective complaints, and because [the
18 lay witness’s] testimony was similar to such complaints, it follows that the ALJ also gave
19 germane reasons for rejecting [the lay witness’s] testimony”)).

20 Plaintiff’s uncle, David Jones, provided a written statement describing plaintiff’s
21 difficulties with a job as a dishwasher and prep cook at the Kitsap Golf and Country Club in
22 December 2003. (AR 260.) The ALJ considered the statement, noting plaintiff admitted he

01 was dependent on methamphetamines from 2003 through 2006, and finding Mr. Jones’
02 observations about his nephew not germane to plaintiff’s functional capacity when not impaired
03 by drug dependence. (AR 25.)

04 Plaintiff challenges this finding, arguing the ALJ should have conducted a proper drug
05 abuse and alcoholism (DAA) analysis if he considered substance use to be a factor in plaintiff’s
06 impairments. This argument fails. The ALJ is not required to conduct the DAA analysis until
07 plaintiff has been found disabled, after the ALJ proceeds through the full five step progressive
08 analysis.³ Here, the ALJ did not find plaintiff disabled and, therefore, was not required to
09 conduct the DAA analysis. On the other hand, the fact that Mr. Jones’ observations of plaintiff
10 were made during a period of admitted substance abuse by plaintiff was germane to the ALJ’s
11 evaluation of the weight to be given to those observations.

12 Plaintiff’s grandmother, Ms. Wheeler, provided two questionnaires regarding plaintiff’s
13 activities and functional abilities. (AR 205-12, 231-35.)⁴ The ALJ observed that “as the
14 claimant’s grandmother and primary source of financial support, Ms. Wheeler may be less than
15 objective in her observations.” (AR 25.) Plaintiff argues this reason is not germane, but the
16 this comment was not an improper, broad rationality about family members in general, but,

17 3 A claimant is not entitled to disability benefits “if alcoholism or drug addiction would . . . be a
18 contributing factor material to the Commissioner’s determination that the individual is disabled.” 42
19 U.S.C. § 423(d)(2)(C). Therefore, where relevant, an ALJ must conduct a DAA analysis and determine
20 whether a claimant’s disabling limitations remain absent the use of drugs or alcohol. 20 C.F.R. §§
21 404.1535, 416.935. The ALJ must, first, identify disability under the five-step procedure and, second,
22 conduct a DAA analysis to determine whether substance abuse was material to disability. *Bustamante*
v. Massanari, 262 F.3d 949, 955 (9th Cir. 2001). “If the remaining limitations would still be disabling,
then the claimant’s drug addiction or alcoholism is not a contributing factor material to his disability. If
the remaining limitations would not be disabling, then the claimant’s substance abuse is material and
benefits must be denied.” *Parra v. Astrue*, 481 F.3d 742, 747-48 (9th Cir. 2007).

4 Again, contrary to plaintiff’s contention, the ALJ cited both lay statements. (AR 25.)

01 rather, a specific, non-abstract reason tied to this particular witness. *See Greger v. Barnhart*,
02 464 F.3d 968, 972 (9th Cir. 2006) (“The ALJ also considered Shields’ ‘close relationship’ with
03 Greger, and that she was possibly ‘influenced by her desire to help [him].’ The ALJ’s reasons
04 for doubting Shields’ credibility are germane to her; accordingly, it was not error for the ALJ to
05 disregard her testimony.”)

06 Plaintiff also challenges the substantial evidence support of the ALJ’s evaluation of Ms.
07 Wheeler’s statements about the necessity to provide repeated reminders to plaintiff to perform
08 tasks. The Court, however, finds the ALJ’s consideration of these statements to withstand
09 scrutiny. As previously noted, the ALJ reasonably evaluated Ms. Wheeler’s statements about
10 plaintiff’s abilities in the context of her statement that she tried to give plaintiff and his
11 girlfriend privacy and did not know what they did after they arose and had breakfast. (AR 205.)
12 The ALJ cited various activities that Ms. Wheeler described plaintiff as being able to perform,
13 including that he had no trouble with personal hygiene tasks other than needing a reminder to
14 cut his hair, that he was able to get up each morning to take care of his two young daughters and
15 feed the pets, that he could prepare daily meals for himself and the children, and could perform
16 household chores with some reminders. Ms. Wheeler stated plaintiff went out on a daily basis,
17 drove a car, and did weekly food shopping. He socialized regularly with his family and
18 occasionally with others. The ALJ accepted some of Ms. Wheeler’s statements about
19 plaintiff’s problems with comprehension and short-term memory, and factored them into the
20 RFC finding. (AR 25.) However, the ALJ found plaintiff’s ability to engage in these activities,
21 on the whole, not consistent with the extensive functional limitations reported by Ms. Wheeler.
22 Plaintiff, in sum, fails to demonstrate any error in the evaluation of the lay testimony.

CONCLUSION

Plaintiff fails to meet his burden of demonstrating harmful error in the ALJ's decision. This matter should, therefore, be AFFIRMED.

DATED this 15th day of November, 2012.

A handwritten signature in black ink, appearing to read 'Mary Alice Theiler', written over a horizontal line.

Mary Alice Theiler
United States Magistrate Judge